

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10991-NG

KENNETH M. WHITE and)
MANDY DIAS)
)
Plaintiff)
)
vs.)
)
ERIC MADONNA and CITY OF)
FALL RIVER,)
)
Defendants)

**PLAINTIFFS MOTION IN LIMINE TO PRECLUDE EVIDENCE
OF DEFENDANT ERIC MADONNA'S PHYSICAL INJURIES
AND MEDICAL RECORDS**

Plaintiffs Kenneth M. White and Mandy Dias move *in limine* to preclude Defendants from offering real evidence and/or testimony with respect to, or otherwise referring to (in their opening, closing, or otherwise in the jury's presence) Defendant Eric Madonna's injuries sustained as a result of an incident other than the incident that is the subject of this lawsuit.

In support of this motion, Plaintiffs refers to the deposition testimony wherein Madonna testified to injuries suffered during an altercation with an individual not associated with this lawsuit, inside the tavern, at a time before the incident that is the subject of this lawsuit. (Exh. 1, pp. 175-177). Madonna testified that his subsequent visit to a local hospital for treatment was limited to injuries sustained during that altercation. (Exh. 1, pp. 176-177) Madonna testified further that Plaintiff Mandy Dias was "absolutely not" involved in the defense of the third party during Madonna's altercation with that

individual inside the bar. (Exh. 1, p. 172) Further, Madonna testified that he did not see Plaintiff Kenneth White inside the bar, and did not see White at all until the "cruisers arrived" toward the conclusion of the incident that is the subject of this lawsuit. (Exh. 1, p. 275)

Consequently, any evidence concerning Madonna's injuries sustained as a result of an incident with a third party, other than the incident that is the subject of this lawsuit, has no tendency to prove or disprove any particular fact in this case, and is therefore not a material trial issue. See Liacos, Handbook of Massachusetts Evidence § 4.1.1, at 106 (8th ed. 2007). Evidence must be relevant in order to be admissible. Green v. Richmond, 369 Mass. 47, 59 (1975).

For these reasons, Plaintiff requests that the motion *in limine* to preclude evidence of Defendant Madonna's injuries sustained as a result of an incident other than the incident that is the subject of this lawsuit be ALLOWED.

Plaintiff Kenneth M. White,
By His Attorneys,

BEAUREGARD, BURKE & FRANCO

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